



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re ) Case No. 05-31795-C-7  
SHELLEY G. BARCUS, ) DC No. WAJ-1  
Debtor. )  
\_\_\_\_\_ )

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON MOTION TO VACATE STAY

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

Debtor filed this voluntary chapter 7 petition on September 16, 2005.

On September 27, 2005, William Golf ("movant") filed a

1 motion, notice, and declaration requesting that this court lift  
2 the automatic stay in order to proceed with an eviction action  
3 against debtor. The hearing on the motion was set for October  
4 25, 2005. No opposition to the motion was filed. Upon review  
5 of the record, the court determined that the written record was  
6 adequate and that no oral argument was necessary.

7 The motion establishes that movant owns real property  
8 commonly known as 11006 Winterwind Lane, Rancho Cordova,  
9 California. On June 1, 2004, movant and debtor entered into a  
10 month-to-month tenancy with monthly rental payments of \$1,095.  
11 The debtor defaulted under the terms of the rental agreement.  
12 On August 19, 2005, movant filed an unlawful detainer action  
13 which was set for trial on September 19, 2005. The action was  
14 halted by the filing of the debtor's bankruptcy petition.

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16 Conclusions of Law

17 The automatic stay of acts against the debtor in personam  
18 and of acts against property other than property of the estate  
19 continues until the earliest of the time when the bankruptcy  
20 case is closed, dismissed, or an individual in a chapter 7 case  
21 is granted a discharge. 11 U.S.C. § 362(c). However, the  
22 automatic stay may be terminated earlier if debtor fails to  
23 adequately protect the secured party's interest, § 362(d)(1),  
24 and, with respect to a stay of an act against property, the  
25 debtor does not have equity in the property, § 362(d)(2)(A),  
26 and the property is not necessary to an effective  
27 reorganization. § 362(d)(2).

28 Because the debtor rents the property and does not own the

1 property, the property is not property of the estate, and hence  
2 the debtor has no equity in the property. Therefore the motion  
3 will be granted and the movant may proceed with the eviction.

4 An appropriate order will issue.

5 Dated: October 27, 2005

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8 UNITED STATES BANKRUPTCY JUDGE

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1                   **CERTIFICATE OF SERVICE**

2                   On the date indicated below, I served a true and correct  
3 copy(ies) of the attached document by placing said copy(ies) in  
4 a postage paid envelope addressed to the person(s) hereinafter  
5 listed and by depositing said envelope in the United States  
mail or by placing said copy(ies) into an interoffice delivery  
receptacle located in the Clerk's Office.

6                   Shelley Barcus  
7                   11006 Winterwind Lane  
Rancho Cordova, CA 95670

8                   Diana Cavanaugh  
9                   1555 River Park Drive #206  
Sacramento, CA 95815

10                  John Roberts  
11                  P.O. Box 1506  
Placerville, CA 95667

12                  William Golf  
13                  c/o Warren Jones  
P.O. Box 162544  
14                  Sacramento, CA 95816

15                  Office of the United States Trustee  
United States Courthouse  
16                  501 I Street, Suite 7-500  
Sacramento, CA 95814

17                  Dated: 11-3-05

18                  Dmy

19                  \_\_\_\_\_  
Deputy Clerk